

IN THE UNITED STATES PATENT OFFICE

Applicant : WILSON, Alan Anthony et al.
Application No. : 09/979,569
Filed : 11-19-2001
Title : Method and Apparatus for Loading a Container With a Product
Conf. No. : 3282
Grp./A.U. : 3721
Examiner : Harmon, Christopher R.
Docket No. : PG3707USW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE

The following is in response to the non-final Official Action dated December 14, 2007. Applicants hereby petition for a **three month extension of time**, bringing the period of timely response to on or before 16 June 2008 (June 14 falling on a Saturday).

The Commissioner is hereby authorized to charge such fees and any other fees required or credit any overpayment to Deposit Account No. 07-1392.

Claims 2-4, 6-14, 16-21, 37-39, 41 and 81 are currently pending.

As an initial matter, in the Response filed on September 20, 2007 it was erroneously indicated that two co-pending applications, US Serial Nos. 10/509,466 and 10/509,465, both filed September 28, 2004, were commonly owned by the assignee of the present application. It has been found that that statement was not correct. US Serial Nos. 10/509,466 and 10/509,465 were assigned to Glaxo Group Limited, the present application, however, was

assigned to SmithKline Beecham Corporation. While both Glaxo Group Limited and SmithKline Beecham Corporation are direct or indirect subsidiaries of GlaxoSmithKline Plc, and thus within the GlaxoSmithKline Plc “family”, all applications were not assigned to the same company *per se*. On February 20, 2008, the present application was assigned to Glaxo Group Limited. Thus, at the present time, all three applications are commonly owned by Glaxo Group Limited.

Turning now to the Official Action dated December 14, 2007, the examiner indicated that the IDS filed 9/20/07 failed to comply with 37 CFR 1.98(a)(2), as copies of the foreign patent documents JP 62-146102, JP 54-1280, JP 3-36393 and JP 53-24387 had not been supplied. Copies of these references are now attached. These foreign language documents should be reviewed in conjunction with the partial English language translations already of record, which highlight those portions which caused the JP documents to be raised in the first place. These references were raised in foreign prosecution and are brought to the examiner’s attention to the extent that they may be material to the patentability of the pending claims. Consideration of the references and return of the initialed IDS is respectfully requested.

Next, addressing the rejection based on applicant’s co-pending application: Claims 2-4, 6-14, 16-21, 37-39, 41 and 81 of the present application stand provisionally rejected over pending claims 10, 25, 40 “etc.” of co-pending patent application 10/509,456 (the ‘465 application) under the judicially created doctrine of obviousness-type double patenting (the provisional ODP rejection).

The present US application, the PCT publication of this application WO-A-00/71419, and the Office Action of December 14, 2007 in the instant application, including the existence of the provisional ODP rejection, have all been made of record in the ‘465 application. Although a further Notice of Allowance has been issued in the ‘465 application, both applications remain pending.

It appears that the sole rejection remaining in the present application is the provisional ODP rejection. The examiner is requested to issue a Notice of Allowance in the present application (as it is the earlier filed application), so as to permit this application to grant. The resulting patent can be made of record in the '465 application, and the merits of a *non-provisional* ODP rejection may be properly considered in that case, as any inappropriate patent term would theoretically include that case rather than a patent issuing on the present application.

In light of the above, it is believed that all outstanding issues have been addressed. Favorable consideration of this submission, due consideration of the Japanese references earlier submitted (and foreign language copies which are included herewith), and issuance of a Notice of Allowance is hereby requested.

Conclusion

All issues raised by the examiner to date have been addressed. As such, the claims are asserted to be in a condition for allowance. Applicant requests that a timely Notice of Allowance be issued in this case. If any matters exist that preclude issuance of a Notice of Allowance, the examiner is requested to contact the applicant's representative at the number indicated below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge any fees or credit any overpayment, particularly including any fees required under 37 CFR Sections 1.16 and/or 1.17, and any necessary extension of time fees, to deposit Account No. 07-1392.

Respectfully submitted,

Dated: 16 June 2008

/James P. Riek/

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